

**BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF CALIFORNIA**

In the Matter of the Licenses and Licensing  
Rights of

**SPECIAL NOTICE OF  
DEFENSE**

File No. DISP05047170 - AP

MARSH USA, INC., d.b.a.  
MARSH RISK AND INSURANCE  
SERVICES  
(license # 0437153);

MARSH USA BENEFITS, INC., d.b.a.  
MARSH BENEFITS TEXAS  
INSURANCE SERVICES  
(license # 0D95521);

MARSH USA, INC., d.b.a. MARSH  
NEVADA RISK & INSURANCE  
SERVICES  
(license #0440077);

MARSH USA, INC., d.b.a.  
MARSH OKLAHOMA RISK &  
INSURANCE SERVICES  
(license # 0D36801);

MARSH USA, INC., d.b.a.  
MARSH KENTUCKY INSURANCE  
SERVICES  
(license # 0E02076);

MARSH USA, INC., d.b.a.  
MARSH OF ALASKA INSURANCE  
SERVICES  
(license # 0E77965);

MARSH USA, INC., d.b.a.  
MARSH OHIO INSURANCE  
SERVICES  
(license # 0D91009);

MARSH USA, INC., d.b.a.  
MARSH ILLINOIS RISK &  
INSURANCE SERVICES  
(license # 0D75401);

MARSH USA, INC., d.b.a.  
MARSH IDAHO RISK &  
INSURANCE SERVICES  
(license # 0D01897);

1 MARSH USA, INC., d.b.a.  
2 MARSH MASSACHUSETTS RISK &  
INSURANCE SERVICES  
(license # 0E14678);

3 MARSH USA, INC., d.b.a.  
4 MARSH UTAH RISK & INSURANCE  
SERVICES  
(license # 0D36853);

5  
6 Respondents.  
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8 Respondents and their parent, Marsh & McLennan Companies Inc., stipulate to the  
9 following:  
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11 1. On March 7, 2006, the Department of Insurance served an Accusation in this  
12 matter on Respondents. The Department and Respondents, along with their parent corporation,  
13 Marsh & McLennan Companies, Inc., now wish to enter into this Special Notice of Defense to  
14 resolve all issues raised in the Accusation.

15 2. Respondents are licensed by the Department in one or more capacities, including fire  
16 and casualty broker-agent, life agent, surplus lines broker, special lines surplus lines broker, and  
17 reinsurance intermediary broker.

18 3. The attached Decision and Order will be issued by the Commissioner without the  
19 taking of proof and without a hearing or further adjudication of any question of fact or law.

20 4. Respondents waive their right to a hearing on the Accusation, and waive all other  
21 due process rights that may be accorded to it by the California Administrative Procedure Act  
22 (Sections 11500-11528 of the Government Code), California Insurance Code, California  
23 Constitution, United States Constitution, and every other statute, case and regulation.

24 5. In any proceeding between Respondents and the California Department of Insurance  
25 or the State of California, Respondents waive their right to attempt to set aside or vacate any  
26 provision of this Special Notice of Defense or the Decision and Order to be issued pursuant  
27 thereto, including by petition for any form of judicial or administrative review on any grounds  
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1     whatsoever.

2             6.     In investigating and pursuing this matter since inception, the Department has  
3     incurred \$15,000 in costs, which Respondents agree to reimburse.

4             7.     Respondents through their parent Marsh & McLennan Companies, Inc. (hereafter  
5     collectively “Marsh”) have executed a settlement agreement on January 30, 2005 entitled  
6     “Agreement between the Attorney General of the State of New York and the Superintendent of  
7     Insurance of the State of New York, and Marsh & McLennan Companies, Inc., Marsh Inc. and  
8     their subsidiaries and affiliates” (the “New York Agreement”). Under the New York Agreement,  
9     Marsh agreed to pay Eight Hundred Fifty Million Dollars (\$850,000,000) into a fund (the “Fund”)  
10    in four annual payments, commencing in June 2005 and ending in June 2008. Marsh agreed to  
11    make payments from the Fund to “Participating Policyholders.” Participating Policyholders are  
12    those Marsh clients who retained Marsh’s U.S. offices to place, renew, consult on or service  
13    insurance with inception or renewal dates between January 1, 2001 through December 31, 2004  
14    where such placement resulted in contingent commissions or overrides recorded by Marsh  
15    between January 1, 2001 through December 31, 2004, and such eligible Marsh clients tender a  
16    release in the form attached to the New York Agreement as Exhibit 2.

17            Pursuant to the New York Agreement, Marsh calculated, in accordance with a formula  
18    approved by the New York Attorney General, the amount of money each Participating  
19    Policyholder would be eligible to receive. Marsh sent a notice to each of its eligible clients setting  
20    forth the following items: (i) each client’s name and address; (ii) the client’s insurer(s), product  
21    line(s) and policy(ies) purchased and policy number(s); (iii) the amount the client paid in  
22    premiums for each such policy; (iv) for each such policy, the amount of contingent commission or  
23    override revenue recorded by Marsh during the Relevant Period attributable to that policy; (v) the  
24    amount of contingent commission override revenue each client is eligible to receive for each such  
25    policy and in the aggregate for all such policies pursuant to this Agreement; and stating that the  
26    amount paid may increase if there is less than full participation by eligible clients in the Fund.  
27    Pursuant to the terms of the New York Agreement, eligible Marsh clients were given until  
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1 September 20, 2005 to request a distribution from the Fund. If a client elected not to participate  
2 or otherwise did not respond (the "Non-Participating Policyholders") that client's allocated share  
3 may be used by Marsh under certain circumstances to satisfy pending or other claims asserted by  
4 policyholders relating to these matters. Non-Participating Policyholders will not receive a  
5 distribution from the Fund until all Participating Policyholders have been paid the full aggregate  
6 amount due as calculated in paragraph 2 of the New York Agreement, nor shall the total payments  
7 from the Fund to any Non-Participating Policyholders exceed 80% of that Non-Participating  
8 Policyholder's original allocated share. If any funds remain in the Fund as of June 20, 2008, any  
9 such funds shall be distributed on a pro rata basis to the Participating Policyholders.

10 Pursuant to the New York Agreement, approximately \$100,000,000 will be paid to more  
11 than 7,500 Participating Policyholders domiciled in California. Marsh made initial payments of  
12 more than \$33,000,000 to California Participating Policyholders on November 1, 2005. Marsh  
13 will make additional payments to California Participating Policyholders on June 30, 2006, June  
14 30, 2007, and June 30, 2008.

15 8. Within forty-five (45) days of each subsequent payment from the fund, Marsh will  
16 file a report with the Department of Insurance, certified by an officer of Marsh, listing all amounts  
17 paid from the Fund to California Participating Policyholders.

18 9. Marsh neither admits nor denies the allegations or legal conclusions in the  
19 Accusation or the attached Decision and Order.

20 10. In accordance with the terms of the New York Agreement, Marsh agrees to  
21 implement the following business reforms in California with respect to placing, renewing,  
22 consulting on or servicing an insurance policy.

23 A. Permissible Forms of Compensation

24 In connection with its insurance brokerage, agency, producing, consulting and other  
25 services in placing, renewing, consulting on or servicing any insurance policy, Marsh shall accept  
26 commissions if before the binding of any such policy: (a) Marsh has in plain, unambiguous,  
27 written language fully disclosed such commissions, in either dollars or percentage amounts; and  
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1 (b) the U.S. client has consented in writing to Marsh receiving that compensation. Nothing in this  
2 paragraph relieves Marsh of complying with additional requirements imposed by law, including  
3 the requirements for written documentation relating to fees paid directly by clients. Marsh may  
4 not retain interest earned on premiums collected on behalf of insurers without prior notification to  
5 the client, and only when such retention is consistent with the requirements of, and is permitted  
6 by, applicable law.

7 B. Prohibition of "Bid-Rigging" Arrangements

8 In placing, renewing, consulting on or servicing any insurance policy, Marsh will not  
9 directly or indirectly knowingly accept from or request of any insurer any false, fictitious, inflated,  
10 artificial, "B" or "throw away" quote or indication, or any other quote or indication except for a  
11 quote or indication that represents the insurer's best evaluation at the time when the quote or  
12 indication is given of the minimum premium the insurer would require to bind the insurance  
13 coverage desired by Marsh's client. Nothing herein shall preclude Marsh from accepting or  
14 requesting any bona fide quote or indication.

15 C. Prohibition of Reinsurance Brokerage "Leveraging"

16 In placing, renewing, consulting on or servicing any insurance policy, Marsh will not  
17 directly or indirectly accept from or request of any insurer any promise or commitment to use any  
18 of Marsh's brokerage, agency, producing or consulting services, including reinsurance brokerage,  
19 agency or producing services, unless, before the binding of any such policy: (a) Marsh in plain,  
20 unambiguous, written language fully discloses the compensation, in either dollars or percentage  
21 amounts, that Marsh or its affiliate will receive as a result of those services; and (b) the client  
22 consents in writing to Marsh or the affiliate receiving that compensation.

23 D. Prohibition of Inappropriate Use of Wholesalers

24 In placing, renewing, consulting on or servicing any insurance policy, Marsh will not  
25 directly or indirectly knowingly place, renew, consult on or service its clients' insurance business  
26 through a wholesale broker unless agreed to by the client after full disclosure of a) the  
27 Compensation received or to be received by Marsh, b) any Marsh interest in or contractual  
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1 agreement with the wholesaler, and c) any alternatives to using a wholesaler.

2 E. Mandated Disclosures to Clients

3 1) Prior to binding or requesting an insurer to issue a policy for a  
4 particular client, Marsh will disclose to that client all quotes and indications sought and all quotes  
5 and indications received by Marsh in connection with the coverage of the client's risk with all  
6 terms, including but not limited to any Marsh interest in or contractual agreements with any of the  
7 prospective insurers, and all compensation to be received by Marsh for each quote, in dollars if  
8 known at that time or as a percent of premium if the dollar amount is not known at that time, from  
9 any insurer or third party in connection with the placement, renewal, consultation on or servicing  
10 of insurance for that client.

11 2) Marsh will disclose to each client at the end of each year all  
12 compensation received during the preceding year or contemplated to be received from any insurer  
13 or third party in connection with the placement, renewal, consultation on or servicing of that  
14 client's policy.

15 F. Standards of Conduct and Training

16 Marsh will implement company-wide written standards of conduct regarding  
17 Compensation from insurers, consistent with the terms of this Special Notice of Defense, subject  
18 to approval of the Department upon its request, which implementation shall include, *inter alia*,  
19 appropriate training of relevant employees, including but not limited to training in business ethics,  
20 professional obligations, conflicts of interest, anti-trust and trade practices compliance, and record  
21 keeping.

22 Marsh will not place its own financial interest ahead of its clients' interests in determining  
23 the best available insurance product or service for its clients. Marsh will communicate with its  
24 clients in sufficient detail to enable them to make informed choices on insurance products or  
25 services, and shall provide complete and accurate information to prospective and current clients  
26 on all proposals and bids received from insurers, including the amount of Compensation or other  
27 things of value that were or will be paid to Marsh by each insurer.

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G. Marsh will establish a Compliance Committee of the Board of Directors of Marsh and McLennan Companies, Inc. which will monitor Marsh's compliance with the standards of conduct regarding Compensation from insurers and will report on a quarterly basis to the Board of Directors the results of its monitoring activities for a period of five (5) years from January 30, 2005.

H. Marsh will maintain a record of all complaints received concerning any Compensation from an insurer, which will be provided to the Compliance Committee of the Board of Directors with the Compliance Committee's quarterly report. The record will further be promptly provided to the Department upon request.

I. The Board of Directors of Marsh & McLennan Companies, Inc. will prepare annual reports on compliance with the standards of conduct regarding Compensation arrangements for five (5) years commencing in March 2006, which will also include the amount of each form of Compensation received by Marsh from each insurer with which it placed insurance during the preceding year. These reports will be promptly provided to the Department upon request

J. Limitation on Extraterritorial Effect  
The provisions of paragraphs A through I shall apply only to those Marsh entities that place, renew, consult on or provide services in connection with policies covering risks, property or operations in California, irrespective of client domicile.

11. This Special Notice of Defense shall not be interpreted to alter the terms of any insurance policy sold, assumed or acquired by Respondents or the parties to the policy.

12. Within thirty (30) days, Respondents agree to file a report with the Department, certified by a senior officer of Marsh, confirming the business reforms have been implemented by

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1 Marsh in California.

2 13. Marsh agrees to cooperate with the Department with regard to any future  
3 investigation of conduct affecting California policyholders by any persons other than Marsh or its  
4 former employees although Marsh is not obligated under this provision to produce documents or  
5 disclose information that is protected from disclosure by legal privilege, work-product doctrine, or  
6 other legal protection, and may withhold or redact documents from disclosure on the grounds of  
7 legal privilege, work-product doctrine, or other legal protection.

8 14. This Special Notice of Defense constitutes the entire agreement between the parties  
9 with respect to the Accusation in this case, and supersedes all prior agreements, arrangements or  
10 understandings (whether in written or oral form) between Respondents and the Department.

11 15. The Department and Respondents agree that this Special Notice of Defense  
12 constitutes a full and final resolution and release by the Insurance Commissioner only of all  
13 violations alleged in the Accusation, and all violations that could have been alleged under an  
14 alternative legal authority or theory arising from any of the same facts. The California  
15 Department of Insurance agrees not to file any Complaint or initiate any other proceeding of any  
16 kind seeking any remedy against Marsh, its subsidiaries, or its affiliates, for any violation of the  
17 laws of the State of California that was within the scope of the Accusation in this matter.

18 16. This Special Notice of Defense and its release language shall in no way be  
19 interpreted or construed as releasing, prohibiting or otherwise limiting in any way, any cause of  
20 action that may be pursued by any person other than the Insurance Commissioner. This Special  
21 Notice of Defense and its release language are specifically not binding upon the Attorney General  
22 of the State of California. This Special Notice of Defense and its release language are not binding  
23 upon any person in his or her private capacity.

24 17. Respondents acknowledge that they have carefully reviewed the Accusation, the  
25 attached Decision and Order, and this Special Notice of Defense, and that this Special Notice of  
26 Defense is freely and voluntarily executed by Respondents after consultation with counsel and  
27 with actual or constructive notice of all their legal rights.



1           18.     Respondents acknowledge that this Special Notice of Defense is a public record  
2     pursuant to Government Code §11517(e), and will be accessible to the public pursuant to the  
3     Public Records Act, Government Code §6250 *et seq.* The Accusation, this Special Notice of  
4     Defense, and the Decision and Order adopting this Special Notice of Defense, will be posted on  
5     the Department's web site as required by California Insurance Code section 12968.

6           19.     Respondents acknowledge that California Insurance Code section 12921 requires  
7     the Insurance Commissioner personally to approve the final settlement of this matter. Both the  
8     settlement terms and conditions contained herein and the acceptance of those terms and conditions  
9     are contingent upon the Commissioner's approval.

10          20.     The parties may mutually agree to any reasonable extensions of time that might  
11     become necessary to carry out the provisions of this Special Notice of Defense.

12          21.     Nothing herein shall confer any rights upon any persons or entities other than the  
13     California Department of Insurance and Respondents, Marsh & McLennan Companies, Inc., and  
14     their affiliates and subsidiaries. In no event shall the terms of this Special Notice of Defense or  
15     the Accusation or Decision and Order in this matter, or their existence or any provision or any  
16     negotiations relating to any of their provisions in any way be construed as, offered as, received as,  
17     used or deemed to be evidence of any kind: (i) in any civil, criminal, judicial, administrative,  
18     regulatory or other proceeding against Respondents, Marsh & McLennan Companies, Inc., and  
19     their affiliates and subsidiaries, except any proceeding by the California Department of Insurance;  
20     or (ii) of a judgment by the California Department of Insurance as to the facts, evidence, merits, or  
21     value of any claim or claims that any specific policyholder(s) may have against Respondents,  
22     Marsh & McLennan Companies, Inc., and their affiliates and subsidiaries.


23          22.     This Special Notice of Defense is not intended to disqualify Marsh, or any current  
24     employee of Marsh, from engaging in any business in the State of California or in any other  
25     jurisdiction.

26          23.     The terms of this Special Notice of Defense cannot be amended except in writing,  
27     signed by all the parties. If compliance with any aspect of this Special Notice of Defense proves  
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1 impracticable, Marsh reserves the right to request that the parties modify the Special Notice of  
2 Defense accordingly.


3 24. This Special Notice of Defense shall be governed by the laws of the State of  
4 California.

5 Marsh & McLennan Companies, Inc.,  
6 on behalf of itself and its subsidiaries

7   
8 \_\_\_\_\_  
9 Peter J. Beshar  
10 Executive Vice President and General Counsel

Dated: March 8, 2006

11 Approved As To Form:  
12 Sonnenschein Nath & Rosenthal LLP

13   
14 \_\_\_\_\_  
15 Sanford Kingsley  
16 Attorneys for Marsh & McLennan Companies,  
17 Inc., on behalf of itself and its subsidiaries

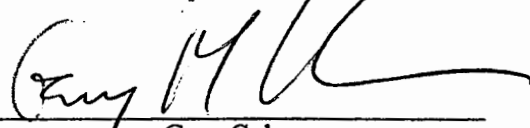
Dated: March 7, 2006

18 California Department of Insurance

19 \_\_\_\_\_  
20 John Garamendi  
21 Insurance Commissioner

Dated: \_\_\_\_\_, 2006

22 Approved As To Form:  
23 California Department of Insurance

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25 \_\_\_\_\_  
26 Gary Cohen  
27 General Counsel

Dated: March 8, 2006

28 #373679v1

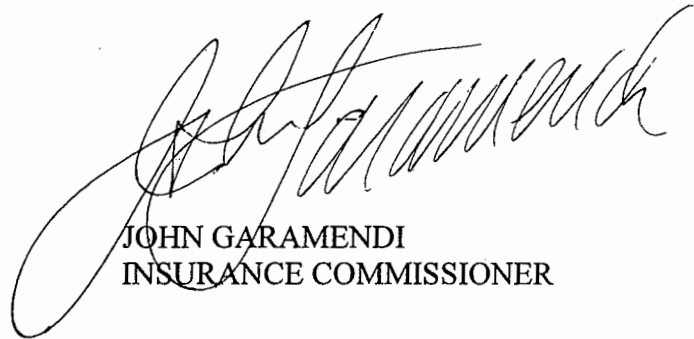
Based on the changes in Marsh's board and management, and its commitment to reform, it is not necessary to impose any monetary penalty or other sanction against Respondents.

ORDER

Respondents shall perform all covenants set forth in the Special Notice of Defense filed herewith and shall pay the Department the total sum of \$15,000 to reimburse it for its costs incurred in investigating this matter.

Date:

3/9/06

A large, stylized handwritten signature in black ink, likely belonging to John Garamendi, is written over the printed name and title.

JOHN GARAMENDI  
INSURANCE COMMISSIONER

#373678v1

**BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF CALIFORNIA**

In the Matter of the Licenses and Licensing  
Rights of

DECISION AND ORDER

File No. DISP05047170 - AP

MARSH USA, INC., d.b.a.  
MARSH RISK AND INSURANCE  
SERVICES  
(license # 0437153);

MARSH USA BENEFITS, INC., d.b.a.  
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MASSACHUSETTS RISK &  
INSURANCE SERVICES  
(license # 0E14678);

MARSH USA, INC., d.b.a. MARSH  
UTAH RISK & INSURANCE  
SERVICES (license # 0D36853);

Respondents.

This matter came before the Commissioner pursuant to an Accusation served by the Department of Insurance on Respondents on March 7, 2006. The parties executed a Special Notice of Defense, pursuant to which the Commissioner hereby makes the following findings of fact and conclusions of law, and issues this Decision and Order;

Respondents are licensed by the Commissioner in one or more capacities, including fire and casualty broker-agent, life agent, surplus lines broker, special lines surplus lines broker, and reinsurance intermediary broker;

Marsh & McLennan Companies, Inc. ("Marsh") was, at the time of the misconduct alleged in the Accusation, and remains, "the controlling person" of Respondents within the meaning of section 1668.5;

The Commissioner has jurisdiction over Respondents, *inter alia*, pursuant to Respondents' possession of the abovementioned licenses;

The Accusation alleges that Marsh, through the actions of certain former employees, while acting as an insurance agent or broker: (1) Steered business to certain insurance companies to maximize its revenue; (2) Failed to fully disclose commissions to clients; (3) Deceived clients into believing the clients were obtaining the least expensive insurance Marsh could obtain; (4) Perpetrated the alleged deception by conspiring with certain insurance companies to have those insurers submit fictitious, artificially high bids, which Marsh then presented to its clients; (5) Failed in some instances to obtain the best terms possible for its clients in accordance with the client's express needs or desires regarding coverage, price, or service, and failed to exercise reasonable care, skill, diligence and judgment in seeking insurance for its clients; and (6) Failed to disclose information that it knew or reasonably should have known regarding deficiencies (with respect to coverage, price, or service) in the coverage it obtained relative to the insured's express needs and desires;

Based on some of the above conduct, a number of former Marsh employees have pleaded guilty to misdemeanor and/or felony charges;

Pursuant to Insurance Code §33 and §1623, in California a broker acts as an agent of the insured;

Under California law, when a producer is acting as an agent of the insurer in placing insurance policies for clients based in California, it may also be acting simultaneously as a common law agent of the proposed policyholder (i.e., as a dual agent);

To the extent that Marsh espoused to its California clients and to the public at large, that it would advise its clients about insurance, advocate on their behalf in negotiations with insurance companies, and obtain insurance for them on the most favorable terms it could, Marsh created a common law agency relationship with its clients;

All agents and brokers owe duties to their principals, including loyalty, honesty, integrity, good faith, avoiding self-dealing, and full disclosure;

As set forth in the emails summarized in paragraph 6 of the Accusation, Marsh, through the actions of certain former employees, did not fully discharge its duties to certain of its California clients;

Respondents neither admit nor deny any of the allegations or legal conclusions recited in the Accusation or in this Decision and Order;

Marsh has signed a settlement agreement with the New York Attorney General in which Marsh has committed to implement various business reforms that, if adhered to, should assure that the alleged misconduct will not recur;

Approximately \$100,000,000 will be paid to more than 7,500 Participating Policyholders domiciled in California under the terms of the New York Agreement;

Marsh has installed new management in key positions, including a new Chief Executive Officer, and changed the composition of its Board of Directors so that presently 12 of 13 directors are independent;

The Commissioner has authority to suspend or revoke Respondents' licenses pursuant to Insurance Code sections 1668.5 and 1765(f);

Cause exists under section 1748 for an order requiring Respondents to reimburse the Department for its costs incurred in investigating and prosecuting this matter, which were stipulated to be \$15,000;

Grounds exist for discipline against the licenses and licensing rights of Respondents, pursuant to sections 1668.5 and 1765(f);

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Rights of

MARSH USA, INC., d.b.a.  
MARSH RISK AND INSURANCE  
SERVICES (license # 0437153);  
*et al.*

Respondents.

ORDER DESIGNATING DECISION  
AS PRECEDENT

File No. DISP05047170 – AP

Precedent Decision No. 06-01

The attached Decision and Order is hereby designated as a precedential decision  
pursuant to California Government Code Section 11425.60 (b), effective immediately.

Date:

3/9/06



JOHN GARAMENDI  
INSURANCE COMMISSIONER